UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF NEW YORK

ROBERT NOVAK, d/b/a Pets Warehouse and PetsWarehouse.com,

Plaintiff,

-v-

OVERTURE SERVICES, INC, GOOGLE, INC., INNOVATIVE MARKETING SOLUTIONS, INC., d/b/a KANOODLE.COM, NEEPS INC d/b/a THEFERRETSTORE.COM, JOHN HOLDEFEHR d/b/a JUDGE-FOR-YOURSELF.COM, BIOCHEMICS, INC. d/b/a DOCTORDOG.COM,

Defendants.

GOOGLE, INC.,

Counter-claimant,

-v-

ROBERT NOVAK, d/b/a Pets Warehouse and PetsWarehouse.com,

Counter-defendant.

No. CV 02 5164
(DRH) (WDW)

DISCOVERY PLAN PROPOSED BY DEFENDANT GOOGLE

BACKGROUND

Plaintiff and Counter-defendant Robert Novak ("Plaintiff") filed his Complaint on September 24, 2002 Plaintiff unsuccessfully sought a stay of these proceedings in May 2003, and at no point sought to conduct a 26(f) conference with Defendant and Counter-claimant Google Inc. ("Google"). There has not been a Case Management Conference in this case.

In April 2004, following Google's successful motion to dismiss the first count of Plaintiffs' complaint, Google's counsel contacted Plaintiff to schedule a conference concerning discovery between Google and Plaintiff. On April 27, 2004, counsel to Google and Mr. Novak participated in a telephone conference pursuant to Rule 26(f) of the Federal Rules of Civil Procedure. Mr. Novak requested that Google's counsel forward to him a draft discovery plan for

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his review. Counsel forwarded a draft joint discovery plan to Mr. Novak by fax on May 7, 2004. On May 10, 2004, counsel and Mr. Novak again spoke by telephone; Mr. Novak stated that he did not agree with the substance of the proposed discovery plan and that he did not agree that a plan needed to be filed, jointly or otherwise, no later than May 11, 2004, as required by Rule 26(f). Mr. Novak has set forth his positions in a letter to Google's counsel dated May 10, 2004, a copy of which is attached.[1]

Mindful of the Court's rules and in accordance with Rule 26(f), Google is nevertheless submitting its proposed discovery plan and requests the Court incorporate it into its Case Management Order in this case.

DISCOVERY

Initial Disclosures. As required by 26(a), Google will make Initial Disclosures no later than May 11, 2004. Mr. Novak indicated by phone on May 10 that he does not intend to make any Initial Disclosures by May 11, and did not indicate when his initial disclosures would be forthcoming.

Subjects of discovery. The subjects on which discovery may be needed include:

- Communications between Plaintiff and Google;
- Plaintiff's alleged rights to the PETS WAREHOUSE trademark;
- Alleged use by Google of Plaintiff's PETS WAREHOUSE trademark;
- Google's sale of advertising to co-defendants Neeps, Inc. d/b/a The FerretStore.com, John Holdefehr d/b/a Judge-for-Yourself.com, and Biochemics, Inc. d/b/a DoctorDog.com in connection with search queries on www.google.com;

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[1] Plaintiff has suggested that there should be a consolidated discovery plan in this matter. Google certainly has no objection to having its proposal adopted by the other defendants, and believes it affords a reasonable (perhaps generous) schedule for resolving the matter.

- Google's alleged sale of advertising keyed to search queries on www.google.com for the phrase "PETS WAREHOUSE";
- Actual and likelihood of confusion, if any, relating to Plaintiff and arising from Google's alleged use of Plaintiff's trademark;
- Harm, if any, suffered by Plaintiff as a result of Google's allegedly improper actions; and
- Plaintiff's purchases of advertising keyed to search queries generally.

Timing of discovery. Discovery should be completed as follows:

Last Day to Amend Pleadings or Join Parties	June 22, 2004
Close of Fact Discovery	September 13, 2004
Simultaneous Exchange of Expert Reports	October 13, 2004
Simultaneous Exchange of Rebuttal Expert Reports	November 29, 2004
Close of Expert Discovery	January 14, 2005
Filing of Dispositive Motions	February 15, 2005
Pretrial conference	May 16, 2005

Discovery need not be conducted in phases. Discovery should be limited to the subjects above.

Limitations on Discovery. Google proposes that Google and Mr. Novak limit the total number of percipient witness depositions they may take in this case to three each (as between these parties only). Mr. Novak would be free to reach independent limitations with other Defendants. Google otherwise agrees that discovery in this case should be governed by the Federal Rules of Civil Procedure and the Local Rules of this Court.

Dated: May 10, 2004

By: /s/ David H. Kramer

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Attorneys for Defendant Google Inc.

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2004, I caused the **Discovery Plan Proposed by Defendant Google** to be dispatched via Federal Express to the following:

ROBERT NOVAK
Plaintiff Pro Se
1550 Sunrise Highway
Copaigue, New York 11746

And **Discovery Plan Proposed by Defendant Google** to be dispatched via U.S. Mail to the following:

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